

OLC - 78-0808
DOA/Log

21 FEB 1978

MEMORANDUM FOR: Office of Legislative Counsel

ATTENTION:

VIA:

Director of Logistics

FROM:

Chief, Procurement Management Staff, OL

SUBJECT:

Senate Bill S. 2259, Small Business Procurement Expansion and Simplification Act of 1977

1. In accordance with your request, Procurement Management Staff, Office of Logistics, has reviewed Senate Bill S. 2259 and offers the following observations and comments.

2. Sec. 101, Section 15(b), would take away from the individual executive agencies the authority to make final determination on procurements whenever the Small Business Administration (SBA) and the head of an agency fail to agree. Additionally, this would apparently open all procurements to scrutiny by the SBA and presents an intolerable situation.

3. Sec. 101, Section 15(e), reserves exclusively for small business all procurements under \$10,000 unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive. This appears to be too restrictive but it may not affect this Agency if the Defense Appropriations Act continues to be passed with a Maybank Amendment. In any event, the imposition of having to go to small business exclusively when there are a sufficient number of qualified bidders creates a hardship if the small companies are unable to supply the same quality of goods or services.

4. Sec. 102, Section 8(d)(1), imposes the requirement that prior to award of any Government procurement contract over \$500,000, the apparent low bidder or offeror on such contract shall submit to the Federal department or agency letting such contract a written small business subcontracting plan. The small business subcontracting plan would then be reviewed and considered as part of the determination of responsiveness of

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such bidder or offeror. No award shall be made to any bidder or offeror without the concurrence of the Administrator. This portion of the Bill limits the management prerogatives of any company proposing to do business with the Government. It places the Administrator in an overseer position and, in effect, gives the Administrator the authority to confirm all procurement actions and to contest any procurements that do not meet the Administrator's standards. It is recommended that strong opposition be taken to the review of procurements by the Administrator.

5. Title II, Sec. 201, of this Bill authorizes and directs the Administrator of Federal Procurement Policy to promulgate regulations to establish procedures for insuring compliance with such provisions by all executive agencies. Sec. 203 would require this Agency to give bid sets and specifications to any small business which makes a request for them as well as the name of an employee to answer questions pertaining thereto. Sec. 204 requires advertising in Commerce Business Daily unless the head of an agency personally determines that emergency circumstances prevent compliance. Sec. 205 establishes arbitration panels which could present a problem. All of the aforementioned present security problems for this Agency. It is recommended that a waiver for national security be obtained, if possible. If a waiver is not possible, then strong opposition to this portion of the Bill should be expressed.

6. Overall, the Small Business Procurement Expansion and Simplification Act of 1977, S. 2259, is not viewed as being beneficial to CIA and could present both administrative and security problems if passed as written.

7. If you have any questions pertaining to this matter,

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cc: A-DDA